

NTSB Order No. EA-4909

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 28th day of August, 2001

Respondent .

Docket SE-15618

Respondent has appealed from the oral initial decision of Administrative Law Judge William A. Pope, II, rendered at the conclusion of an evidentiary hearing held on September 29, 1999.¹ In that decision, the law judge found that respondent, the

Respondent filed a brief on appeal; the Administrator filed a reply.

Director of Maintenance at Casino Airlines (Casino), a Part 121 carrier, failed to comply with a requirement of the company's block inspection program (as approved by the FAA) to remove, clean, and check the engine fuel nozzles during the 400-hour inspection, and thus violated sections 43.13(a), (b), and 43.16 of the Federal Aviation Regulations (FAR).² The law judge

²These regulations provide as follows:

§43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in § 43.16. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

(b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness).

§ 43.16 Airworthiness Limitations.

Each person performing an inspection or other maintenance specified in an Airworthiness Limitations section of a manufacturer's maintenance manual or Instructions for Continued Airworthiness shall perform the inspection or other maintenance in accordance with that section, or in accordance with operations

modified the sanction from the 60-day suspension of respondent's powerplant rating on his mechanic certificate sought by the Administrator, to a 30-day suspension.³ For the reasons discussed below, we deny respondent's appeal.

The Administrator's complaint, as amended, alleged, in pertinent part:⁴

1. You hold Mechanic Certificate No. 438536532 with Airframe and Powerplant ratings.

2. At all times material to the allegations contained herein, you were employed with Casino Airlines, a Part 121 air carrier, in the capacity of Director of Maintenance.

3. On or about February 5, 1998, Casino performed a scheduled 400 hour inspection on N650LX, a British Aerospace Jetstream aircraft, Series 3100/3200.

4. You signed off Casino Airlines Maintenance Task Cards #61 and #62 with the entry "N/A, not at this time", regarding the cleaning and functional check of the fuel manifold nozzle assemblies.

5. At the time you made this entry on the Task Cards, the left and right engine fuel nozzles were due the 400-hour inspection workscope as required by Casino's Inspection Manual.

The Casino maintenance inspection manual (as submitted to

(..continued)

specifications approved by the Administrator under Parts 121, 123, 127, or 135, or an inspection program approved under § 91.409(e).

³The Administrator did not appeal the reduction in sanction. The 30-day suspension is within the range given in the Administrator's Sanction Guidance Table, FAA Order 2150.3A, Compliance and Enforcement Program, Appendix 4, for the violations found. (Exhibit (Ex.) C-15.)

⁴The complaint, originally filed May 12, 1999, was amended by motion granted September 24, 1999.

the FAA by Casino and accepted by the FAA⁵) required that the fuel nozzle assemblies of the subject aircraft be inspected as part of the 400-hour block inspection program.⁶ (Ex. C-2.)

While the engine manufacturer's service bulletin identified the permissible inspection interval for this work item as 450 engine-operating hours, under the company's maintenance inspection manual (as respondent acknowledges), the fuel nozzle assemblies were a required part of the 400-hour inspection. Respondent submitted a revision request to the PMI but at the time the 400-hour inspection came due, it had not yet been approved.

On or about February 5, 1998, when the 400-hour inspection was performed, respondent marked "N/A" on the task cards.⁷ He also signed the airworthiness release and the aircraft was then

⁵The principal maintenance inspector (PMI) accepted Casino's maintenance inspection manual on November 26, 1997. (Transcript (Tr.) at 16; Ex. C-2.)

⁶The service includes cleaning the fuel nozzles, having them flow checked, and reinstalling fuel nozzles on the aircraft.

⁷The two task cards, one for the left engine and one for the right, described the task as "[c]lean fuel manifold and nozzle assy and carry out functional check;" listed the task frequency as "[r]epeat 400 hours;" and listed the manhours as eight hours each. (Ex. C-6.) Respondent marked both cards "N/A @ this time" in the mechanic's box and initialed it. Id. The chief inspector signed the task cards in a similar manner. (Tr. at 24.)

Others relied on the signed task cards to do their jobs. (Tr. at 25; 32.) Casino's chief inspector and a mechanic signed the aircraft flight log returning the aircraft to service following the completion of the 400-hour inspection as per the Casino Continued Airworthiness Inspection Program. (Tr. at 21-23; Ex. C-5.) They also relied on the task cards to sign the tally sheet (a list of each enumerated task card containing a separate signature for each card) and the maintenance and discrepancy log, which indicates that each component of the 400-hour inspection has been completed. (Tr. at 28, 32.)

operated in revenue service. (Tr. 42-43; Ex. C-10.) Three days later, on February 8, 1998, the number one engine fuel flow nozzles were replaced pursuant to a flow check and respondent signed the maintenance and discrepancy log indicating that fact.⁸

The law judge determined that, even though respondent did not believe the company manual should have required the fuel nozzle check to be performed at the 400-hour block inspection, it nevertheless was the procedure submitted by Casino to, and approved by, the FAA. Therefore, respondent was required to comply with the Casino maintenance inspection manual as written until the FAA agreed to a modification. The law judge found that the Administrator proved the charges by a preponderance of the evidence.

Respondent argues on appeal that he followed the manufacturer's recommendations rather than the company manual because the two were not identical and that his choice should not cause him to be found in violation of the FAR. He asserts that he acted with safety in mind (even though he identified no actual unsafe condition) and, further, that performing the maintenance as an out-of-phase rather than part of the 400-hour inspection would do more to prevent the nozzles from being operated in excess of the engine manufacturer's recommended limits. Finally, he maintains that FAR section 43.13(a) gives him the option to

⁸For reasons that are not clear from the record, the number two engine fuel nozzles had been cleaned/flow checked on January 14, 1998. This, however, did not obviate the requirement to perform the work in connection with the 400-hour inspection.

follow the manufacturer's manual, service bulletins, or the Casino maintenance manual.

We disagree with his contentions. First, we note that Casino's operations specifications require maintenance to be performed in accordance with the airline's continuous maintenance program.⁹ According to Casino's Maintenance Inspection Manual, the "[m]aintenance requirements must be completed in accordance with the frequencies stated in this Manual."¹⁰ (Ex. C-3 at 1.) The approved maintenance inspection manual then is the method, technique, or practice acceptable to the Administrator, for purposes of FAR section 43.13.

The Administrator's interpretation of the regulation in this case is not an unreasonable one, namely, that Casino's approved

⁹The operations specifications state that "[e]ach aircraft authorized for use shall be maintained in accordance with the continuous airworthiness maintenance program and limitations specified in these operations specifications." (Ex. C-1.) It further states:

Each aircraft and its component parts, accessories, and appliances are maintained in an airworthy condition in accordance with the time limits for the accomplishment of the overhaul, replacement, periodic inspection, and routine checks of the aircraft and its component parts, accessories, and appliances. Time limits or standards for determining time limits shall be contained in these operations specifications or in a document approved by the Administrator and referenced in these operations specifications.

Id. Surely respondent, as Casino's Director of Maintenance, knew of the requirements set forth here.

¹⁰"It is well-established that inspections are a form of maintenance which are also governed by section 43.13(a)." Administrator v. Negron, NTSB Order No. EA-4344 at 7 (1995), citing Administrator v. Woods, 5 NTSB 1819 (1987).

Maintenance Inspection Manual is the method acceptable to the Administrator, for purposes of complying with FAR section 43.13. When its manual was submitted to the Flight Standards District Office for acceptance, Casino elected to include the fuel nozzle maintenance in the 400-hour inspection, despite being questioned by the PMI on the advisability of that choice. (Tr. at 78; 109.) Once included in the 400-hour inspection, respondent was not free to disregard the requirement at will.¹¹ (Tr. at 166.)

Respondent also claims that he "modified the inspection routine out of necessity" (respondent's brief at 7), in the interest of safety, because, he claims, the methods of tracking time were inconsistent -- the company manual using airframe hours and the manufacturer using engine hours -- which could result in the service life of the fuel nozzles being exceeded. He has failed, however, to identify an unsafe situation in this case.¹²

Finally, he asserts that no harm was done, since the Administrator ultimately approved the change anyway. Again, we must disagree. The Administrator's safety program would be

¹¹Respondent's actions belie his asserted position that he could choose between manuals. He specifically had sought the PMI's approval for a change to the Casino manual that would set the fuel nozzle inspection at 450 hours, the limit stated in the manufacturer's manual. After all, if he genuinely believed that he could choose to follow either manual, there would have been no need to request a change to Casino's manual.

¹²There is no evidence that, had respondent followed the Casino manual, the service life of the fuel nozzles would have been exceeded. Further, he does not explain how his choice to inspect the fuel nozzles on one engine three days *after* the 400-hour inspection was safer than performing the inspection as required by Casino's manual.

undermined, with the potential for chaotic results, if approved maintenance inspection manual provisions, referenced in applicable operations specifications, could be avoided in such a fashion.¹³ After-the-fact rationalization does not make respondent's actions acceptable under the FAR.¹⁴ Moreover, respondent courted a falsification charge by writing "N/A" on the task card, when Casino's manual plainly required the inspection at 400 hours.

In sum, respondent has identified no issues to warrant a reversal of the law judge's decision.¹⁵

¹³We suspect that it is a rare instance where an operator chooses to impose a stricter requirement on itself than is set forth in the manufacturer's manual.

¹⁴See Administrator v. Troxel, 6 NTSB 366, 369 (1988) (a mechanic who had failed to calibrate a pressure tester was not excused from a violation simply because the tool was found to be within acceptable limits when it finally was calibrated).

¹⁵Respondent also argues the Administrator did not prove by a preponderance of the evidence that the aircraft at issue was ever operated in an unairworthy condition subsequent to the 400-hour inspection, or that respondent's actions allowed the aircraft to be operated in an unairworthy condition. The Administrator does not address this issue in her reply brief. Nonetheless, it appears that the airworthiness of the aircraft is not material to the violations alleged.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision is affirmed; and
3. The 30-day suspension of the powerplant rating of respondent's mechanic certificate shall begin 30 days after the service date indicated on this opinion and order.¹⁶

CARMODY, Acting Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

¹⁶For the purpose of this order, respondent must physically surrender the powerplant rating of his mechanic certificate to a representative of the Federal Aviation Administration (as stated in the suspension order) pursuant to FAR section 61.19(f).